

additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred on eligible grazing lands physically located in the county where the eligible adverse weather or eligible loss condition occurred. The grazing loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, flood, freeze, hurricane, hail, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart D, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss due to livestock death to be considered eligible, the livestock death must have occurred in the county where the eligible loss condition occurred. The livestock death must be due to an eligible loss condition determined as eligible by the Deputy Administrator and not related to an eligible adverse weather event as specified in Subpart E for LIP.

(g) For honeybee or farm-raised fish feed losses to be considered eligible, the honeybee or farm-raised fish feed producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee or farm-raised fish feed losses must be for feed that was intended as feed for the honeybees or farm-raised fish that was damaged or destroyed due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, excessive wind, flood, hurricane, tidal surge, tornado, volcanic eruption, and wildfire.

(h) For honeybee colony or honeybee hive losses to be considered eligible,

the honeybee colony or honeybee hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or honeybee hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, excessive wind, flood, hurricane, tornado, volcanic eruption, and wildfire. To be eligible for a loss of honeybees due to colony collapse disorder, the eligible honeybee producer must provide acceptable documentation to support that the loss was due to colony collapse disorder. Except for 2008 and 2009 honeybee losses, acceptable documentation must include an acceptable colony collapse disorder certification by an independent third party as determined by the Deputy Administrator, plus any other documentation requested by FSA. For 2008 and 2009 honeybee losses such an independent certification is not required in all cases, but rather a self-certification by the honeybee producer as determined acceptable by the Deputy Administrator may be allowed in addition to whatever other documentation might be requested.

(i) For a death loss for bait fish or game fish to be considered eligible, the producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The bait fish or game fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, an earthquake, flood, hurricane, tidal surge, tornado, and volcanic eruption.

[74 FR 46673, Sept. 11, 2009, as amended at 75 FR 19188, Apr. 14, 2010; 76 FR 54075, Aug. 31, 2010]

§ 760.204 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock feed losses and grazing losses, livestock must meet all the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult buffalo, adult or non-adult beefalo, deer, elk, emus,

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equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock producer, during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock that has been maintained for commercial use as part of the producer's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that has not been produced and maintained for reasons other than commercial use as part of a farming operation; and

(6) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for feed losses and grazing losses are:

(1) Adult beef cows or bulls,

(2) Adult buffalo or beefalo cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emus,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult buffalo or beefalo,

(13) Non-adult dairy cattle,

(14) Poultry,

(15) Reindeer,

(16) Sheep, and

(17) Swine;

(c) Ineligible livestock for feed losses and grazing losses include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the nor-

mal business operation of the producer, as determined by FSA;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Any wild free roaming livestock, including horses and deer;

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

(d) For death losses for livestock owners to be eligible, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(i) Adult beef bulls;

(ii) Adult beef cows;

(iii) Adult buffalo or beefalo bulls;

(iv) Adult buffalo or beefalo cows;

(v) Adult dairy bulls;

(vi) Adult dairy cows;

(vii) Alpacas;

(viii) Chickens, broilers, pullets;

(ix) Chickens, chicks;

(x) Chickens, layers, roasters;

(xi) Deer;

(xii) Ducks;

(xiii) Ducks, ducklings;

(xiv) Elk;

(xv) Emus;

(xvi) Equine;

(xvii) Geese, goose;

(xviii) Geese, gosling;

(xix) Goats, bucks;

(xx) Goats, nannies;

(xxi) Goats, kids;

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(xxii) Llamas;
(xxiii) Non-adult beef cattle;
(xxiv) Non-adult buffalo or beefalo;
(xxv) Non-adult dairy cattle;
(xxvi) Reindeer;
(xxvii) Sheep, ewes;
(xxviii) Sheep, lambs;
(xxix) Sheep, rams;
(xxx) Swine, feeder pigs under 50 pounds;
(xxxi) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(xxxii) Swine, sows, boars, barrows, gilts over 150 pounds;
(xxxiii) Turkeys, poult; and
(xxxiv) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, “contract growers” will only be deemed to include producers of livestock, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine, as defined in § 760.202, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

(i) Chickens, broilers, pullets;
(ii) Chickens, layers, roasters;
(iii) Geese, goose;
(iv) Swine, boars, sows;
(v) Swine, feeder pigs;
(vi) Swine, lightweight barrows, gilts;
(vii) Swine, sows, boars, barrows, gilts; and
(viii) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses to be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) They must have died:
(i) On or after the beginning date of the eligible loss condition; and
(ii) On or after January 1, 2008, and no later than 60 calendar days from the ending date of the eligible loss condition, but before November 30, 2011; and
(iii) As a direct result of an eligible loss condition that occurs on or after

January 1, 2008, and before October 1, 2011; and

(iv) In the calendar year for which payment is being requested; and

(2) Been maintained for commercial use as part of a farming operation on the day the livestock died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(g) For honeybee losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(h) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment so to be considered “farm raised fish” as defined in this subpart, and the farm-raised fish must:

(1) For feed losses:

(i) Be an aquatic species that is propagated and reared in a controlled environment;

(ii) Be maintained and harvested for commercial use as part of a farming operation; and

(iii) Be physically located in the county where the eligible adverse

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weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

(i) Be bait fish or game fish that are propagated and reared in a controlled environment;

(ii) Been maintained for commercial use as part of a farming operation; and

(iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

[74 FR 46673, Sept. 11, 2009, as amended at 76 FR 54075, Aug. 31, 2011]

§ 760.205 Eligible producers, owners, and contract growers.

(a) To be considered an eligible livestock producer for livestock feed losses and to receive payments, the participant must have owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition and must have had a loss that is determined to be eligible as specified in § 760.203(d), and the producer's eligible livestock must have been livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county as specified in paragraph (b)(1)(i) or (ii) of this section.

(b) To be considered an eligible livestock producer for grazing losses and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition, must have had a loss that is determined to be eligible as specified in § 760.203(e), and the loss must have occurred on land that is:

(i) Native or improved pastureland with permanent vegetative cover or

(ii) Planted to a crop planted specifically for the purpose of providing grazing for covered livestock;

(2) Have had eligible livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county as specified in paragraph (b)(1)(i) or (ii) of this section;

(3) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for covered livestock that is physically located in the county where the eligible adverse weather or loss condition occurred during the normal grazing period for the county.

(c) For livestock death losses to be eligible the producer must have had a loss that is determined to be eligible as specified in § 760.203(f) and in addition to other eligibility rules that may apply to be eligible as a:

(1) Livestock owner for the payment with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for ELAP payment with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 760.204(d).

(2) Contract grower for ELAP payment with respect to the death of an animal, the animal must be in one of the categories specified in § 760.204(e), and the contract grower must have had:

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(d) To be considered an eligible honeybee producer, a participant must have an interest and risk in an eligible honeybee colony, as specified in § 760.204(g), for the purpose of producing honey or pollination for commercial use as part of a farming operation and